DEFERRED COMPENSATION

IMMEDIATE SOLUTION

WORKING WITH an investment bank client, we developed and implemented a complex integrated package of derivative transactions to enable a major public company to offset, for accounting and EPS purposes, the potentially dilutive effects of a contingent equity compensation program over an extended period. To achieve the desired results, we structured novel interrelationships between a series of long-term put and call options, a dividend-rate based swap and a total return swap based on zero coupon bond rates, coupled with a contemporaneous large private placement of the issuer's common stock. Because the transaction had a 20-year term, each derivative component had to be precisely correlated with each other component so as to permit interim settlements, negotiated adjustments and partial unwinds, that would permit the issuer to hedge (but not over-, or under-, hedge) relative to the fluctuating deferred compensation exposure it was addressing. The potential for numerous interim events, as well as the unusually long-term nature of the transaction, required intensive analysis and application of securities, commodities, tax and insolvency laws.

With an investment bank client, we developed specialized documentation to enable a large pension fund sponsored by a Fortune 100 company to empower one of the plan's investment advisers to trade with the investment bank under master trading agreements. This structure required us to develop a unique bifurcation of the trading documentation between the plan and the investment adviser to accommodate the permitted scope of activities of the investment adviser, while still having the adviser avail itself of its status as a QPAM for ERISA purposes. These arrangements included a related master securities loan arrangement to facilitate stock borrow in connection with the contemplated equity derivative transactions. In addition to presenting challenging securities law issues, this structure called for a specialized application of the ERISA regime to equity derivatives activities, including unusual account arrangements to facilitate the fund's stock lending activities.